Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

MARIA V. CARMONA, *Pro Se*,
Petitioner,

v.

PAUL H. O'NEILL, SECRETARY
DEPARTMENT OF THE TREASURY,
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

MARIA V. CARMONA, *Pro Se*
8306 HAVEN HILL COURT
LAUREL, MARYLAND 20723
(301) 490-4328

56 pp

QUESTIONS PRESENTED

1. What constitutes exhaustion of administrative remedies?

2. What constitutes sufficient information?

3. What constitutes a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment?

4. What constitutes conspiracy by the United States government to deny an individual's civil right to equal employment opportunity?

5. Can the United States government simply choose not to prosecute crimes committed by officials of the United States government?

PARTIES

All parties appear in the caption. Petitioner will be referred to by her name, Carmona; Respondent will be referred to as the Secretary of the Treasury.

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Petitioner Maria V. Carmona respectfully prays that this court grant a writ of certiorari to review the order of the United States Court of Appeals for the District of Columbia Circuit entered on July 23, 2002.

OPINIONS BELOW

The July 23, 2002, order by the court of appeals is set out at pp. 1a-2a of the Appendix to this petition. The January 21, 2002, order and memorandum opinion by the district court are set out at p. 3a and pp. 4a-17a of the Appendix. The October 1, 2002, order by the court of appeals denying rehearing en banc is set out at p. 18a of the Appendix.

JURISDICTION

The judgement of the Court of Appeals for the District of Columbia Circuit was entered on July 23, 2002, Carmona's petition for rehearing en banc was denied on October 1, 2002. The jurisdiction of this court is invoked pursuant to 28 U.S.C § 1254.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Amendment XIV provides, in part, no state shall...deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. § 241 (2002) Conspiracy Against Rights

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, or Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.... They shall be fined under this title or imprisoned not more that ten years, or both....

EEOC 29 C.F.R. 1614 provides, in part, that:

> (a) It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or handicap and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency. (b) No person shall be subject to retaliation for opposing any practice made unlawful by title VII of the Civil Rights Act (title VII) (42 USC 2000(e) *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 USC 621 *et seq.*), ...or for participating in any stage of administrative or judicial proceedings under those statutes.

STATEMENT OF THE CASE

Since December 1995, Petitioner Maria V. Carmona, a Hispanic White Female Over Age 40, who is highly-educated, highly-credentialed, highly-experienced, and highly-qualified, and who has over 18 years of service with the Department of the Treasury Office of Inspector General (OIG) has filed seventeen formal Equal Employment Opportunity (EEO) complaints against the Secretary, Department of the Treasury, Respondent. Three of these, sequentially the eighth, ninth, and tenth, respectively filed on November 17, 1997, December 1, 1997, and December 12, 1997, are the subject of the instant civil action. It should be noted that Michael Morgan-Gaide, former Director of the Treasury Washington Regional Complaint Center (WRCC), notified Carmona in writing that she should initiate a new EEO process regarding any matters that were not a part of a previous complaint. In each of her seventeen formal EEO complaints, Carmona has placed on the administrative record clear and indisputable material factual evidence of a pattern of separate and distinct adverse actions taken against Carmona throughout her over 18-year career with

Treasury that clearly and indisputably demonstrate a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment committed against her.

The Secretary of the Treasury has proffered no informal resolutions or administrative remedies to any of the claims, issues, or matters raised by Carmona and has continued to commit *prima facie* acts of discrimination and retaliation against Carmona. Treasury did not conduct any investigations into the three subject complaints. It is a material fact that Treasury has not investigated the majority of Carmona's seventeen formal EEO complaints. The Equal Employment Opportunity Commission (EEOC) has consistently found for the Secretary of the Treasury in all of Carmona's administrative cases, citing procedural reasoning, as opposed to merit, while denying Carmona her right to be fully heard on the issues by denying Carmona discovery and administrative hearings. The lower court Judges[1] found for the Secretary of the Treasury, while also citing procedural reasoning, and while also denying Carmona her right to discovery and her inviolate right to a jury trial, thus also denying Carmona her right to be fully heard on the issues. It is further Carmona's understanding that she is not the only individual of Hispanic National Origin who has claimed a long-term pattern of adverse actions having been committed by the Secretary of the Treasury. See *Contreras, et al v. O'Neill*, No.02cv923, under consideration as a class action suit. It should be noted that Carmona has not been a party and is not a party to this class action suit.

In regards to the three subject formal EEO complaints, Carmona properly and timely engaged the EEO process by requesting the assignment of an EEO counselor in each case. It should be noted that Treasury simply did not assign an EEO counselor for Carmona's tenth complaint and that after

[1] The term *lower court Judges*, when used, refers collectively to both the district court Judge and the appellate court Judges.

60 days had passed without assignment of an EEO counselor Carmona filed her tenth formal EEO complaint. It should be noted that Treasury has exhibited a pattern of either unreasonably delaying and/or not assigning EEO counselors. Carmona submits that sufficient information was provided to each of the EEO counselors assigned such that informal resolutions could have been proffered by Treasury, but none were forthcoming.

Upon no informal resolutions being proffered by Treasury, Carmona properly and timely filed her formal EEO complaints, claiming in each a continuation of a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment being committed against her. The record below shows exactly what was provided, to include specific actions taken, dates, and personnel involved, to the EEO counselors assigned and in Carmona's formal EEO complaints. (*See* 01cv0115,#19,Pl. Exh. 1-3)

Due to no investigations having been conducted by Treasury, Carmona properly and timely requested that administrative hearings be conducted before an EEOC administrative judge so that fair and impartial complete factual records could be developed. The EEOC conducted no administrative hearings and requested no further information from Carmona, or, to her knowledge, from Treasury. Carmona properly and timely appealed to the EEOC Treasury's dismissal of her three complaints. It is an indisputable material fact that Treasury did not even oppose, i.e., file briefs in opposition to, two of Carmona's three administrative appeals. The EEOC denied the appeals. Carmona properly and timely filed a request for reconsideration of the EEOC's decision. The EEOC denied the request for reconsideration, and notified Carmona that she had no further right to administrative appeal and did have the right to file a civil action in district court. Treasury followed by issuing a final agency decision (FAD).

Following receipt of the above-referenced notifications, Carmona properly and timely filed her civil action on the grounds of violations of the Civil Rights Act of 1964 (as amended), i.e., Title VII, and age, i.e., the Age Discrimination in Employment Act (ADEA), while stating her overarching claim of a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment.

The record below demonstrates that the Judge, (1) while allowing the Secretary of the Treasury to file an untimely answer to Carmona's complaint, (2) while allowing the Secretary to file an untimely and improper motion to dismiss for lack of jurisdiction (i.e., after the Secretary had filed an answer to Carmona's complaint), (3) without any administrative records of investigation having been developed by Treasury or by the EEOC, (4) while not granting discovery, (5) while not conducting a jury trial, (6) with the Secretary having denied over half of the 140 claims made by Carmona in her civil complaint, (7) with numerous material facts remaining in dispute, and (8) without having met Carmona, granted summary judgement as a matter of law to the Secretary of the Treasury, and dismissed Carmona's case with prejudice, finding that Carmona failed to exhaust her administrative remedies. It should be noted regarding the Judge's decision that courts are reluctant to grant fact-based summary judgement motions early in the case, before discovery is completed. *See, e.g., Evans v. Technologies Applications & Serv. Co.*, 80 F.3d 954, 961 (4th Cir.1996).

Carmona wishes to express her deepest concerns over the overwhelming amount of clear misstatement and misrepresentation of material facts in the memorandum opinion (MO). As a few examples, the Judge refers several times to Carmona's attorney (App. 6a, 7a, 14a). At no time has Carmona, who is not an attorney, been represented by an attorney. The Judge states several times, and in various manners, that Carmona failed to respond to EEO

Investigator Stephen Tolbert's letter and thus failed to cooperate with the investigation (App. 5a, 14a, 15a). The record clearly shows that Carmona, in direct response to Tolbert's actions sent several letters to former Secretary of the Treasury Robert E. Rubin specifically detailing her concerns in this regard. (*See* 01cv0115, #19, Pl. Exh. 10) The Judge states that the Treasury Department EEO counselor assigned to Plaintiff's case contacted Plaintiff through a letter dated January 22 (App. 13a, 14a). Neither Carmona nor her representative have any record of such a contact by an EEO counselor. In her MO, the Judge states that Carmona failed to respond to several requests for information from the EEO counselors and the EEO officer (App. 14a). Neither Carmona nor her designated representative are aware of any requests for additional information from the EEO counselors assigned or from the EEO officer. The Judge refers to "vague allegations of discrimination without details or dates" (App. 15a). The administrative records clearly show that Carmona provided, as she has provided in each of her seventeen formal EEO complaints, an overwhelming preponderance of highly-specific information and documentation, to include specific actions taken, dates, and personnel involved. The Judge makes comments regarding "an utter lack of cooperation at the agency level" (App. 16a). Carmona submits that she has properly and timely engaged and participated in the EEO administrative process in accordance with the laws, rules, regulations, and previous Commission decisions in each of her seventeen formal EEO complaints. The Judge comments that "the EEOC process, while admittedly not perfect, is respectable..." (App. 17a). Carmona has found no evidence on her administrative records or legal record to support this statement. Carmona respectfully requests that the Judge specifically refer to evidence on the record in support of her above-referenced findings.

In addition, the Judge cites *Artis v. Greenspan*, 158 F.3d 1301 (D.C. Cir. 1998), finding that Carmona failed to exhaust

administrative remedies (App. 12a-14a). Carmona submits that the material facts in *Artis* are not relevant to Carmona's case. Carmona understands that *Artis* involves a class action suit filed prior to proper support being provided for a class action claim. Carmona submits that the Judge made misstatements and misrepresentations of material facts in her MO in order to give the appearance that the material facts in Carmona's case are similar to those in *Artis* in order to cite *Artis* in dismissing Carmona's case.

In her MO the Judge cites *Taylor v. United States Treasury Department*, 127 F.3d 470, 475 (5th Cir. 1997), a highly-specific fact-intensive case regarding a Freedom of Information Act (FOIA) request and the Privacy Act (App. 9a). The Judge follows this citation with a statement regarding the jurisprudential exhaustion doctrine. Carmona submits that the material facts in *Taylor* have no relevance to her case, and submits that the Judge is using the jurisprudential exhaustion doctrine simply as a way to avoid adjudicating Carmona's merited EEO claims.

Lastly, the district court Judge dismissed Carmona's case with prejudice, a decision that is not consistent with previous court decisions finding failure to exhaust administrative remedies, because those cases have historically been dismissed without prejudice (citations omitted).

Carmona submits that the district court Judge abused her discretion by citing irrelevant cases, by purposefully misstating and misrepresenting material factual evidence, and by choosing to use the jurisprudential exhaustion doctrine simply to dismiss Carmona's case.

Carmona also submits, with deepest concerns, that the Judge issued her decision with a specific purpose in mind, i.e., to deny Carmona her right to be fully heard on the issues, to erase three of Carmona's merited EEO complaints against the Secretary of the Treasury, and to ensure that Carmona can never refile her suit.

The appellate court, while granting the United States government an untimely motion to file an untimely motion for enlargement of time so the United States government could file an untimely motion for summary affirmance, and while denying Carmona filing of a brief, or presenting oral argument, and without the appellate court Judges having met Carmona, granted summary affirmance to the Secretary of the Treasury stating, in part, that "Appellant failed to exhaust her administrative remedies for her national origin, sex discrimination, and retaliation claims, because she failed to provide sufficient information to enable appellee to investigate her administrative complaints." The appellate court denied Carmona's petition for rehearing en banc on October 1, 2002. As such, Carmona also questions the motives and intent of the appellate court Judges.

It is of special interest to note that the district court Judge, in her MO, states that "to date, no agency or court has specifically addressed the merits of Plaintiff's grievances."(App. 16a) Carmona submits that this very statement supports Carmona's claim that she has been unfairly denied her right to be fully heard on the issues.

REASONS FOR GRANTING WRIT

This petition for writ of certiorari is respectfully submitted because the decision of the appellate court conflicts with decisions of the Supreme Court; and because the decision, if let stand, would set a precedent whereby the United States government could deny an individual a fair and equitable right to be fully heard on the issues, and whereby the United States government would be free to conspire, discriminate, and retaliate against an individual exercising his or her civil right to equal employment opportunity.

Questions 1 and 2. Exhaustion of Administrative Remedies and Sufficiency of Information

Carmona submits that (a) her being notified in writing by the EEOC that she had no further right to administrative

appeal and did have the right to file a civil action, and (b) her being notified in writing of a FAD by Treasury, which, in accordance with EEO MD-110 Chapter 5,VI., B., notified Carmona that she had the right to file a civil action, was clear acknowledgement by the EEOC and by the Secretary of the Treasury that Carmona had exhausted the administrative process; and that these notifications further acknowledged that Carmona had exhausted administrative remedies for her claims and was free to pursue legal remedies.

It is a clear and indisputable material fact that at no time during the administrative process did the Secretary of the Treasury claim nor did the EEOC inform Carmona that she had failed to exhaust her administrative remedies.

In addition, the Supreme Court held, in *Darby v. Cisneros*, No. 91-2045, that Federal courts do not have the authority to require a plaintiff to exhaust available administrative remedies before seeking judicial review where the relevant statute nor agency rules specifically mandate exhaustion as a prerequisite to judicial review.

Carmona submits that the lower court Judges erred and abused their discretion in finding for the Secretary of the Treasury when, in the context of the Secretary's failure to file a timely answer to Carmona's complaint and his filing of several untimely and improper motions, the Judges found that Carmona failed to exhaust her administrative remedies, when Carmona had so clearly exhausted the administrative process prior to filing her suit. Carmona submits that the lower court Judges also erred and abused their discretion when they (1) denied Carmona discovery and a jury trial, thus denying Carmona her right to be fully heard on the issues; (2) failed to have the Secretary of the Treasury place on the record any indication of the information that was found to be at issue, (i.e., regarding sufficiency of information) in deciding against Carmona; and (3) cited questionable cases and improperly used the jurisprudential

exhaustion doctrine as a way to simply avoid adjudicating Carmona's merited claims.

At no time during the administrative or legal process has Carmona been made aware of any information that was in her sole possession that prevented Treasury from conducting any investigations into any of Carmona's complaints. It is an indisputable material fact that the Secretary of the Treasury has never demonstrated or been asked to demonstrate, by the EEOC or by the lower court Judges, the nature, relevance, and/or pertinence of the information that the United States government finds is at central issue in deciding against Carmona. Carmona is simply unaware of what this information could possibly be.

Carmona submits that the lower court Judges simply can not decide against Carmona while making credibility determinations, weighing evidence, or drawing inferences from information that the Judges and Carmona have never even seen.

A motion for summary judgement should be granted only when there is no genuine issue of material fact, and, as a matter of law, the moving party is entitled to judgement. *See* Fed. R. Civ. 56(c).

Carmona submits that, due to the lower court Judges finding that certain unknown information was of such significance and was of such importance that not having this information somehow prevented the Secretary of the Treasury from conducting any investigations into any of Carmona's complaints, it clearly was incumbent upon the Judges to have this information be demonstrated on the record before deciding against Carmona. It is clear, therefore, that this unknown information that is a central issue in the courts' eyes creates such a genuine issue of disputation of material fact that summary judgement could not possibly have been granted to the Secretary of the Treasury.

Carmona submits that she did provide sufficient information in accordance with 29 C.F.R. § 1614, EEO

MD-110, and relevant Commission decisions to enable the Secretary of the Treasury to investigate her administrative complaints. The Commission has held that when the agency has the information sought in its own records, it may not dismiss the complaint due to a failure to cooperate on the part of the complainant. *Syphax v. Department of Labor*, 01872054, 1781/D4 (1987). The Commission has held that the agency has an obligation to review its own records and the investigator has an obligation to elicit information relevant to the complaint from the agency. In *Wright v. U.S. Postal Service*, 01831406, 1073/B13 (1983), the Commission overturned the agency's cancellation where it made no demonstration of the additional information it sought. It is clear that the Secretary of the Treasury has made no demonstration, on the administrative records or legal record, of the additional information sought. It is also clear that the EEOC failed to apply its own relevant Commission decisions fairly in Carmona's cases.

It also should be especially noted that it was Carmona who properly and timely initiated a request that administrative hearings be conducted on her administrative complaints due to no investigations having been conducted by Treasury, and that, as such, during that process, the Secretary of the Treasury and/or an EEOC administrative judge could have requested information from Carmona during discovery and/or during the administrative hearing if there was any indication that Carmona had in any manner failed to provide sufficient information for her administrative complaints to be investigated. It is clear, therefore, that a fair and equitable process existed, i.e., the EEO administrative hearing process, during which both parties and an EEOC administrative judge could have had a fair and equitable opportunity to request information. It is clear that the EEOC decided not to conduct such a fair and equitable administrative process, and decided against Carmona.

It is also clear that a fair and equitable process existed during the civil process, i.e., discovery and a jury trial, during which both parties, the Judge, and/or the jury could have requested information. It is clear that the lower court Judges also decided not to conduct such a fair and equitable legal process, and decided against Carmona, and made such a decision based on information that has never been demonstrated on the record by the Secretary of the Treasury and that, as such, the Judges have never even seen.

Carmona submits that the Secretary of the Treasury should not be rewarded by the United States government simply because the United States government chooses not to conduct fair and equitable administrative processes and/or fair and equitable legal processes in Carmona's cases. Carmona submits that she should not be decided against when the United States government suppresses material factual evidence from the record.

Carmona submits that the lower court Judges had a duty by law, as the EEOC had an administrative responsibility, to require that the Secretary of the Treasury demonstrate the additional information sought, and the pertinence and relevance of that information, on the record, and allow Carmona to challenge any claims as to this information before deciding against Carmona. It is an indisputable material fact that neither the EEOC nor the lower court Judges showed any interest in having the information at issue, information on which they based their decisions against Carmona, be demonstrated on the record by the Secretary of the Treasury.

Carmona has, in good faith, placed an overwhelming preponderance of highly-specific, relevant, and pertinent information and documentation into evidence, to include specific actions taken, dates, and personnel involved, in support of her overarching claim of a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment on the administrative records in each of her seventeen formal EEO complaints.

The Secretary of the Treasury, on the other hand, apparently does not have to place any relevant, pertinent, and/or material evidence on the record in opposition to the evidence that Carmona places on the record; and the Secretary of the Treasury can consistently be granted administrative dismissals and summary judgments, for procedural reasons, by the United States government without the United States government allowing Carmona to be fully heard on the issues and without the United States government even allowing Carmona to be made fully aware of the information on which the decisions being made against her are being based. This is simply wrong.

The Supreme Court has held that:

> An employment discrimination complaint need not contain specific facts establishing a prima facie case under the *McDonnell Douglas* framework, but instead must contain only a short and plain statement of the claim showing that the pleader is entitled to relief, Fed. Rule Civ. Proc. 8(a)(2).

Swierkiewicz v. Sorema N.A., 534 U.S. 506

Carmona submits that she provided sufficient information in her employment discrimination complaints to meet the conditions under *Swierkiewicz*. In addition, the Supreme Court has held that:

> Rule 50 requires a court to render judgment as a matter of law when a party has been fully heard on an issue, and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue. The standard for judgment as a matter of law under Rule 50 mirrors the standard for summary judgment under Rule 56. Thus, the court must review all of the evidence in the record, cf., *e.g., Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, drawing all reasonable inferences in favor of the nonmoving party, but making no credibility determinations or weighing any evidence, *e.g., Lytle v. Household Mfg.*,

> *Inc.*, 494 U.S. 545, 554-555. The latter functions, along with the drawing of legitimate inferences from the facts, are for the jury, not the court. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe.

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133

Carmona submits that it is reasonable that a jury should not be required to believe that Carmona failed to exhaust her administrative remedies. To the contrary, Carmona submits that it is reasonable for a jury to believe that Carmona, after years of engaging the administrative process with no administrative remedies being proffered by the Secretary of the Treasury and while the Secretary had committed and continued to commit *prima facie* acts of discrimination and retaliation against Carmona, had exhausted the administrative process and had exhausted administrative remedies prior to filing her civil action in district court in pursuit of legal remedies.

Carmona submits that it is reasonable for a jury to believe that the Secretary of the Treasury has not made any good faith effort to informally resolve, to include the proffering of any good faith administrative remedies, any of Carmona's merited claims prior to or after Carmona's filing of any of her seventeen formal EEO complaints or her civil action.

Carmona submits that it is reasonable for a jury to believe that the Secretary of the Treasury has committed, and is being allowed to commit, a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment against Carmona.

Carmona submits that it is reasonable for a jury to believe that the United States government has been, and is, purposefully suppressing evidence favorable to Carmona's case, and may have knowingly and with directed purpose destroyed material evidence that would have favored

Carmona's case by not conducting proper and timely investigations and/or administrative hearings into all of the claims, issues, and matters raised by Carmona, especially in light of the overwhelming preponderance of highly-specific, relevant, and pertinent information and documentation that Carmona has placed on the records in all of her administrative cases and in her legal case.

Carmona submits that the United States government has conspired and is conspiring to deny Carmona her rights (1) to equal employment opportunity, (2) to be fully heard on the issues, and (3) to pursue her claims and rights in a fair, equitable, non-discriminatory, non-retaliatory, and non-hostile environment; and that, as such, the United States government is also denying Carmona her right to all damages legally due Carmona.

It also is clear that in deciding *Reeves* the Supreme Court clarified several issues that are relevant to Carmona's case, and that this decision made it easier for employees to prove that they were victims of on-the-job discrimination, or at least to get their claims before a jury. Employees can win such lawsuits without direct evidence of an employer's illegal intent, the court ruled unanimously. In addition, Justice Sandra Day O'Connor, in writing for the court, said that a federal appeals court wrongly relied on the premise that a plaintiff must always introduce additional, independent evidence of discrimination.

It also is clear that the EEOC acted in such a manner during the administrative process as to indicate that Carmona had in fact provided sufficient information. The Commission has stated the principle that dismissal for failure to cooperate, which is the procedural reasoning the Secretary of the Treasury claimed to dismiss Carmona's employment discrimination complaints during the administrative process and which the EEOC upheld upon Carmona's appeals and request for reconsideration without granting discovery or conducting an administrative hearing, "is permitted only in cases where there is *sufficient*

information on which to base an adjudication..." (emphasis added) *Schultze v. Department of the Army*, EEOC Appeal No. 01995369 (July 11, 2001).

Carmona submits that the Secretary of the Treasury simply can not have it both ways, i.e., (1) the EEOC finding that Carmona provided sufficient information during the administrative process in order for the Secretary of the Treasury to be granted dismissal for procedural reasons, and (2) the lower court Judges finding that Carmona failed to provide sufficient information during the administrative process in order for the Secretary of the Treasury to be granted summary judgment as a matter of law and dismissal with prejudice. Carmona submits that these apparently contradictory and diametrically opposed findings by the EEOC and by the lower court Judges make no sense unless one also finds that the United States government simply refuses to find for Carmona and against the Secretary of the Treasury under any circumstances.

Carmona submits that the lower court Judges abused their discretion in deciding against Carmona in order to simply erase Carmona's merited claims against the Secretary of the Treasury, and did so because the United States government has a vested legal and financial interest in the outcome of Carmona's case, and because the United States government knows that it could not withstand the scrutiny of Carmona being fully heard on the issues and the development of a complete factual record being considered by a fair, impartial, and objective jury.

Questions 3, 4, and 5. Long-Term Pattern, Conspiracy, and Prosecution of Officials

Carmona is a Hispanic White Female Over Age 40 who has participated in the EEO administrative process. Carmona's overall work record clearly and indisputably demonstrates that Carmona is a highly-experienced and highly-qualified, and in many cases uniquely-qualified, long-term employee of the Treasury OIG.

It is an indisputable material fact that despite her overall excellent work record, to include excellent ratings in the management category, and her unique qualifications, to include making the best qualified list for Inspector General at another federal agency in 1993, Carmona has not been permanently promoted beyond the Grade 14 in Treasury.

Carmona submits that it is reasonable for a fair and impartial jury to find that Carmona has placed on the records in her administrative cases such an overwhelming preponderance of highly-specific, relevant, and pertinent information and documentation such that the jury would find that the Secretary of the Treasury has committed and is being allowed to commit a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment against Carmona based on her Hispanic National Origin, sex, age, and in retaliation for Carmona's participation in the EEO process.

As direct material evidence of a conspiracy being committed by the United States government, EEOC Office of Federal Operations (OFO) Director Carlton Hadden, at a May 2000 EEOC Town Hall meeting attended by Carmona and many others, made comments to the effect that the Department of the Treasury is one of the two worst EEO offenders in the Federal Government, but that the EEOC does not want to address the Department of the Treasury because it does not want to bite off more than it can chew. Carmona wishes to call Hadden before a jury so that he may explain these statements, especially in light of decisions he and his staff have consistently made against Carmona and in favor of the Secretary of the Treasury. Carmona submits that Hadden's comments, and decisions made and actions taken by him and his staff, constitute willful obstruction of justice on the part of the EEOC, and that these acts further constitute a conspiracy on the part of officials of the United States government to deny Carmona her right to be fully heard and her right to pursue her claims to equal employment opportunity against the Secretary of the

Treasury in a fair, impartial, and equitable environment. The administrative records in Carmona's cases further evidence the following.

(1) EEOC supervisory administrative judge Samuel Teitelman attempted to manipulate, intimidate, and humiliate Carmona's designated representative, who is not an attorney, into addressing a motion that he said he had in front of him from Treasury, a motion that, upon verbal and written request for clarification by Carmona's designated representative, apparently never existed, while stating that he was going to issue a decision on seven of Carmona's formal EEO complaints, i.e., all of the formal EEO complaints that Carmona had filed at the time, and that his decision would not be based on the merits.

(2) EEOC administrative judge Stephen Shih found that Hispanic is not a national origin, and notified the Secretary of the Treasury's representative but not Carmona or her representative of this determination; and in this context, and in consideration of Carmona having identified herself as a Hispanic White Female Over Age 40, made a finding that no discrimination exists if Carmona is treated in a disparate manner to a White Female; and made this finding even though Carmona has never claimed race as a basis of discrimination; and made his finding of no discrimination to the exclusion of Carmona's Hispanic National Origin, retaliation, and age claims.

(3) In consideration of EEOC administrative judge Shih's clearly bizarre findings and rationales, EEOC Washington Field Office (WFO) Director Tulio Diaz issued a summary judgement in favor of the Secretary of the Treasury, without a proper and complete record of investigation having been developed by Treasury, and while denying Carmona's request for an administrative hearing.

(4) EEOC administrative judge Matthew Bradley dismissed four of Carmona's formal EEO complaints and hearing requests essentially due to the weather when, during an ice storm, Carmona, who timely notified

Bradley's office, was unable to attend a scheduled pre-hearing conference on the morning in question, on a day when the U. S. Office of Personnel Management (OPM) had implemented its unscheduled leave policy and when the Maryland State Police had advised Carmona to stay off the roads unless it was an emergency.

(5) EEOC OFO Director Hadden then placed sanctions against Carmona, denying her administrative hearings on these four formal EEO complaints based on EEOC administrative judge Bradley's clearly bizarre findings and rationales, and his excessively punitive decision under the circumstances.

Carmona wishes to call the aforementioned EEOC administrative Judges and EEOC senior officials before a jury so that they may explain their comments, decisions, and actions taken against Carmona.

It is clear from evidence on the record that Carmona did not fail the EEO administrative process in any manner; it is the federal EEO administrative process that has repeatedly failed Carmona. The legal decision in Carmona's case, if let stand, would mean that the United States judicial system will also have failed Carmona, through no fault of Carmona's.

How should Carmona, an individual of Hispanic National Origin, view Judges in the United States judicial system who issue and then affirm a summary judgement decision against Carmona and in favor of the Secretary of the Treasury; who find it respectable for an EEOC administrative judge to issue a summary judgement in favor of the Secretary of the Treasury while stating that Hispanic is not a National Origin; find respectable an EEOC that consistently finds for the Secretary of the Treasury under any and all circumstances while ignoring Commission decisions in favor of Carmona's cases and while also denying Carmona a fair and equitable right to be fully heard on the issues; and find respectable an EEOC that comments

that it simply chooses not to address the Department of the Treasury?

How does the United States judicial system find any credibility or respectability in the positions of the Secretary of the Treasury or of the EEOC in deciding against Carmona under these circumstances?

Since 1995 when Carmona first became aware of the long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment having been committed against her by the Department of the Treasury, Carmona has had to endure a senior Treasury official, former Deputy Inspector General (DIG) Richard Calahan, who stated to Carmona, prior to Carmona ever having filed a formal EEO complaint, that he had reviewed Carmona's case and determined that it had no merit; who demanded that Carmona attend meetings to discuss her concerns, while denying Carmona the right to have her chosen representative present; who, despite Carmona's stellar work record, stated to Carmona that he had salvaged her off the garbage heap following his highly-questionable dissolution of her office, while also stating to Carmona that he had counseled other OIG employees to accept a downgrade; and all of this despite Carmona's long-term Treasury career, and after Carmona had made the best qualified list for an Inspector General in 1993.

Carmona has had to endure a Treasury senior manager, Maurice "Bud" Moody, who stated, to Carmona's face, that Miami used to be the garden spot of the United States until all the Cubans showed up and ruined it. It is a material fact that Carmona was born in Havana, Cuba, and is a United States citizen; both facts are readily found in Carmona's official personnel records. Moody also allowed a member of his Quality Assurance staff, Jerry Garbinski, to preselect Carmona, as opposed to a random selection as required, for a personnel study; and then Garbinski attempted to humiliate, embarrass, and discredit Carmona in front of her peers at an offsite OIG conference using information he had

taken from Carmona's private and confidential personnel files. Carmona raised what Garbinski did to her SES level manager at the time, former Assistant Inspector General (AIG) John Balakos, but it is Carmona's understanding that no action was taken.

Carmona has had to endure an African-American Treasury senior manager, former Deputy Assistant Inspector General (DAIG) Chester White, who accused Carmona in writing of thwarting his career following Carmona raising concerns in 1995 about being directed to stand and be led in prayer by a minister and being directed to stand and sing the "Black National Anthem" at an official Treasury function. Carmona has had to endure her SES level manager, former AIG Gary Whittington, stating to Carmona, in the above context, that it was her job to make African-American employees "happy."

Carmona has had to endure a Treasury senior manager, former DAIG Karla Corcoran, who was the selecting official for a Grade 15 position telling her during a discussion of Carmona's nonselection for the position, that Carmona wasn't lacking anything, that it just wasn't her turn. Carmona submits that, as such, she was denied this merited promotion to the Grade 15 in 1991 for a reason that had no merit. It should be noted that this issue was first raised in Carmona's first formal EEO complaint filed in December 1995. Carmona was simply unaware of her rights and the extent of the more subtle pattern of discrimination that had been committed against her prior to 1995 and that went unnoticed until the especially overt discriminatory and retaliatory actions started against her in 1995. It is of some interest to note that Corcoran, now Inspector General at the United States Postal Service, is currently undergoing Congressional scrutiny by Senator Grassley's office.

Carmona, as a Grade 14 Supervisory Auditor, has had to endure the humiliation, since first raising her concerns in 1995, of routinely being assigned non-supervisory lower level tasks, in one instance for a period of nearly two years,

that involved essentially Grade 7 tasks. Carmona has had to endure being placed in non-pay status during the end-of-year holidays one year, under questionable circumstances, by the OIG's Office of Management, with no explanation provided to Carmona other than it had never happened to anyone before. Carmona has had to endure a Treasury OIG attorney, Sharon Separ, who accused Carmona in writing of "sophistry" upon consideration of the over 500 pages of highly-specific and indisputable information and documentation that Carmona had placed on the record in her first formal EEO complaint in support of the claims, issues, and matters that she raised. It is Carmona's understanding that Separ made comments to another OIG employee to the effect that everyone eventually quits the EEO process, so all we have to do is wait them out.

Carmona has had to endure a Treasury EEO Officer, Bobbie Sisselberger, who repeatedly unreasonably delayed the assignment of, and/or who simply did not assign any, EEO counselors upon Carmona's proper and timely requests. Sisselberger assigned her personal friend, Craig Brieske, as an EEO counselor to Carmona's first ever request in 1995. Even though Carmona granted a 45-day extension to the designated 30-day informal counseling period in a good faith effort to informally resolve her concerns, Brieske stated to Carmona when she called him near the end of the 75 days to request a status that he hadn't done anything and wasn't going to do anything unless Carmona was going to file an EEO complaint, which Carmona subsequently did, the first formal EEO complaint that Carmona had filed in the, at the time, twentieth year of her federal career. Sisselberger also told Carmona that Treasury was only interested in class action suits and not individual cases. It is Carmona's understanding that Sisselberger informed a Treasury EEO counselor, Terri Roycroft, who was assigned to Carmona's seventh formal EEO complaint, that Carmona had been "stomped on" by management for raising her concerns, a comment which the EEO counselor related to

Carmona's designated representative as an off-the-record comment. Carmona submits that this blatant evidence of retaliation being committed against her by Treasury management should not be withheld from the record under any circumstances. Carmona has had to endure a Treasury EEO counselor, Fern Brodnax, who was assigned to Carmona's second and third formal EEO complaints, who tried to manipulate and intimidate Carmona into signing a blank non-standard form while stating that she, the EEO counselor, would just fill it all out later.

Carmona has had to endure a Treasury investigator, Yolanda Wade, assigned to her first formal EEO complaint who simply refused on two separate occasions to accept information and documentation that Carmona wished to present in response to questions from the investigator, while the investigator and a member of the staff at the WRCC, Viola Cole, threatened Carmona with dismissal of her complaint for failure to cooperate. Carmona's response to the actions by Wade and Cole was to place over 500 pages of highly-specific information and documentation in her appeal of Treasury's dismissal of this complaint. Carmona has had to endure Treasury investigators in general attempting, in a very intimidating and hostile manner, to compel and coerce Carmona into providing involuntary affidavits solely on Treasury's own terms, while attempting to force Carmona into responding to Treasury's preferred misstated, restated, and/or incomplete statement of the claims, issues, and matters Carmona raises in her complaints. The pattern has been that Treasury then dismisses Carmona's complaints for procedural reasons, dismissals which the EEOC consistently upholds upon Carmona's appeals, without the EEOC honoring Carmona's requests for administrative hearings so that fair and impartial records may be developed on all of the claims, issues, and matters that Carmona has raised. This pattern of discriminatory and retaliatory abuses of discretion and authority by officials of the Department of the Treasury and

by officials of the EEOC has been repeated in each and every one of Carmona's administrative processes.

Carmona has had to endure Treasury senior management, former Inspector General (IG) Donald Kirkendall, former DIG Robert Cesca, and former DIG Richard Calahan, among others, who simply create positions for Non-Minority White Females, without giving Carmona an opportunity to compete for these positions, which also is in clear violation of the merit system principles. Two of the Non-Minority White Females who have clearly benefited from the discrimination and retaliation committed against Carmona have risen to the SES level in the federal government. Carmona believes that one, Pamela Gardiner, is currently the acting Inspector General at the Department of the Treasury Inspector General for Tax Administration (TIGTA); and that the other, Mary Demory, is functioning at the SES level at the United States Postal Service OIG, having previously served at the SES level with the United States Department of Justice OIG.

The records in Carmona's administrative case and legal case show that OPM did a study on the Treasury OIG in 1995 that found very serious problems with the OIG's management; and it was reported that OPM officials stated that the Treasury OIG was the worst organization OPM had ever reviewed.

Carmona submits that the United States government does not have the right to selectively interpret or rewrite the laws, rules, or regulations governing equal employment opportunity, as it recently did with 29 C.F.R. § 1614, in such a manner as to deny Carmona her rights or as to cull out a minute aspect in one of Carmona's cases that the United States government then claims is at issue, so that it can simply rationalize procedural dismissals of Carmona's merited claims. The reissue of 29 C.F.R. § 1614, which took effect in November 1999, and which stated that it applied to pending cases, simply did away with significant rights of the complainant, to include severely impacting Carmona's

rights to pursue her claims regarding several of the formal EEO complaints that she had pending at the time.

Carmona submits that Treasury has simply not assigned any TD numbers to several of Carmona's properly and timely filed formal EEO complaints, and that Treasury has done this in order to continue to attempt to cover up the indisputable material factual evidence submitted by Carmona of Treasury's long-term pattern of adverse actions taken against her, and that these actions are also an attempt by Treasury to attempt to avoid the reporting requirements under the recently enacted No FEAR Act.

In further regards to a conspiracy on behalf of officials of the United States government, on September 21, 1999, and shortly after his confirmation, Department of the Treasury Inspector General Jeffrey Rush Jr., in an open forum for OIG employees attended by Carmona and many others, with reference to employees having concerns about serving suspensions of two weeks without pay, made comments to the effect that *I'm the final word on most of the discipline around here*, so, if something *is clear cut, why even come see me?* He went on to say that he knows about the MSPB because he has *been there*, that the head of the OSC is "*a friend of mine*," and that he has been before the District Court. Inspector General Rush then went on to say that when employees file formal actions, such as EEO complaints, it is not just him they are taking on, it is the *entire United States Government* they are taking on. It is noted that the Secretary of the Treasury stipulated to Inspector General Rush's comments. (*See* 01cv0115, # 7, Par. 39-42) It is also Carmona's understanding from an account published recently in U.S. News and World Report, November 11, 2002, that the Treasury Inspector General, whose office is the one that investigates allegations of wrongdoing at the U.S. Customs Service, offered to stop looking into problems at Customs if Customs will stop its probe of the Treasury OIG losing Customs classified documents which dealt with security woes at New

York and Newark ports. It should be noted that the article states that Customs stamped the offer "rejected."

In addition to Inspector General Rush's stated attitude towards equal employment opportunity and his style of management, current Deputy Inspector General Dennis Schindel, prior to Rush's arrival, made comments in an open forum, attended by Carmona and many others, to the effect that he did not know why people kept filing EEO complaints, and that they, the OIG management, were going to do whatever they wanted anyway. It is noted that it was Schindel who left Carmona no choice but to file her first ever formal EEO complaint in her career in 1995 when, as a Deputy Assistant Inspector General, he essentially gave Carmona two options: one, to perform the Grade 7 level tasks that she was being assigned and, two, if she didn't like it, to go through the formal personnel process. Carmona performed these lower-level and lower-graded tasks to the best of her ability, while taking direction from lower-graded employees, for nearly two years, and also, certainly at Schindel's urging, ended up filing her first formal EEO complaint in the, at the time, twentieth year of her federal career.

It is an indisputable material fact that Carmona had been denied several merited promotions to the Grade 15 and had been denied several opportunities to even compete for promotion, prior to Inspector General Rush's arrival into the Treasury OIG in 1999. It is an indisputable material fact that Carmona has been denied four merited promotions to the Grade 15 or above since Rush's arrival. Since Rush's arrival the pattern has been that when Carmona has made a best qualified list, the positions have either been cancelled or someone who is not a member of Carmona's protected group(s) has been selected. Most recently, Carmona made the best qualified list for an SES level position. The announcement was cancelled when the Grade 15 Non-Minority White Male initially selected, Barry Savill, declined the position. The position was reannounced a few

months later; Carmona did not make the best qualified list this time; and a Grade 14 Non-Minority White Male, Robert Taylor, who, to Carmona's understanding, did not apply for or did not make the previous best qualified list, was selected, an individual, Carmona submits, who has a questionable relationship with a high-ranking Treasury official who also happens to be his immediate supervisor, AIG Marla Freedman.

It is further Carmona's understanding that Raymond Kelly, a former Treasury Deputy Secretary for Enforcement, may have made comments to his staff to the effect that anybody who filed an EEO complaint against their agency is a disloyal employee, should be shown no favor, and treated accordingly.

It is a material fact that the Commission has held that such statements and/or comments made by management do in fact constitute retaliation. *Battaglia v. Federal Deposit Insurance Corporation*, EEOC Appeal No. 01985358 (July 30, 2001), citing EEOC's Compliance Manual on Retaliation. *Pallante v. Department of Justice (Immigration and Naturalization Service)*, EEOC Appeal No. 01A04996 (July 6, 2001). *See also McPherran v. Department of the Treasury*, EEOC Appeal No. 1A11357 (August 2, 2001) (adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation).

It is clear by the above accounts that the EEOC simply refuses to address its own personnel, and, by its own admission and actions, refuses to address the Secretary of the Treasury. It is clear that the EEOC has simply refused and is refusing to properly, fairly, and equitably apply the laws, rules, and regulations and its own Commission decisions fairly and equitably in Carmona's cases. And it now appears that the courts are also refusing to properly apply the law, by suppressing material evidence, by denying Carmona her inviolate right to be fully heard on the

issues, and by denying Carmona her inviolate right to a jury trial.

Carmona submits that the above comments made, decisions made, and actions taken by officials of the United States government, if proven true, not only evidence a clear long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment committed against her by officials of the Department of the Treasury and by officials of the EEOC, but that these comments, decisions, and actions may also constitute the crime of conspiracy by officials of the United States government to deny Carmona her civil right to equal employment opportunity under 18 U.S.C. § 241 (2002).

It is indisputably clear upon fair, equitable, and objective review of the records that Carmona did provide in her employment discrimination complaints, and did provide in her civil action, sufficient information, as defined by the regulations and as defined by the Supreme Court, in support of her overarching claim of a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment having been committed against her by the Secretary of the Treasury such that Carmona was and is entitled to relief under Title VII and the ADEA.

Carmona submits that a fair, objective, reasonable, and equitable jury, upon consideration of all of the evidence that is pertinent and relevant to Carmona's case, to include that evidence that Carmona has been improperly and illegally denied to have placed on the record by officials of the United States government, to include the calling and cross-examining of witnesses in order to prove pretext and to question credibility, would find that the United States government, an entity that clearly has a vested legal and financial interest in the outcome of Carmona's case, simply has abused and continues to abuse its authority and discretion in deciding against Carmona, and has in fact

conspired against the exercise of Carmona's clear legal civil right to equal employment opportunity.

Carmona submits that the failure by any entity of the United States government to properly, timely, and fairly address what constitutes clear violations of the law by its senior officials, i.e., the Secretary of the Treasury among others in Carmona's case, merely emboldens Department of the Treasury management and staff and EEOC management and staff to continue their long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment against Carmona without fear of intervention by any entity of the United States government, to now include the U.S. justice system.

Carmona submits that the United States government has a clear and substantial vested legal and financial interest in deciding against Carmona in order to avoid awarding Carmona several clearly merited retroactive promotions, back pay and related benefits, future pay, interest, and hundreds of thousands of dollars in compensatory, pecuniary, and other damages clearly due Carmona.

Carmona respectfully submits that officials of the United States government:

(1) were fully aware of Carmona's Hispanic National Origin, her sex, and her age, as these material facts are part of Carmona's official personnel records;

(2) were fully aware of Carmona's qualifications for promotion, as is clearly evidenced in Carmona's consistently highly-rated performance appraisals, to include consistently high ratings in the management category, over Carmona's more than 18-year career with the Treasury OIG;

(3) were fully aware that Carmona had engaged in the EEO process and had claimed a long-term pattern of discrimination, retaliation, disparate treatment, and a hostile/harassing work environment committed against her in each of the seventeen formal EEO complaints that she has filed to date against the Secretary of the Treasury;

(4) were fully aware of highly-specific, relevant, and pertinent material factual evidence in support of the claims, issues, and matters that Carmona has raised based on the overwhelming preponderance of clear and indisputable information and documentation that Carmona has placed on the administrative records in each of her seventeen formal EEO complaints; and

(5) were fully aware of such evidence as provided by Carmona that the Secretary of the Treasury has always had sufficient information under which each of Carmona's formal EEO complaints could have been and should have been thoroughly investigated by the Secretary of the Treasury.

Carmona submits that any claims made by the Secretary of the Treasury, or by any other entities of the United States government, in contradiction to the above statements and material facts, were and are frivolous and should have been and should be viewed as such.

It is clear that, if the decision in Carmona's case stands, no one would ever be able to successfully prosecute an employment discrimination complaint against an official of the United States government. Instead, the United States government, essentially the defendant in a case, could simply claim that sufficient information was not provided by a plaintiff, without the United States government ever having to demonstrate the additional information sought, or the nature, relevance, and/or pertinence of the information, while denying the plaintiff his or her right to challenge the information, while denying the plaintiff discovery, an administrative hearing, and a jury trial, thus denying a plaintiff their right to be fully heard on the issues; and the courts would simply decide and affirm in favor of the official of the United States government.

CONCLUSION

For the above reasons a writ of certiorari should issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully Submitted,

MARIA V. CARMONA, *Pro Se*
8306 Haven Hill Court
Laurel, Maryland 20723
(301) 490-4328

APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

No. 02-5088 **September Term, 2001**
01cv00115

Filed On:

Maria V. Carmona,
Appellant

v.

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED JUL 23 2002
CLERK

Paul H. O'Neill, Secretary, U. S. Department of Treasury,
Appellee

BEFORE: Edwards, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, and the opposition thereto, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). Appellant failed to exhaust her administrative remedies for her national origin, sex discrimination, and retaliation claims, because she failed to provide sufficient information to enable appellee to investigate her administrative complaints. See 29 C.F.R. §§ 1614.103(a), 1614.107(a)(7); Artis v. Greenspan, 158 F.3d 1301, 1306 (D.C. Cir. 1998); Wilson v. Pena, 79 F.3d 154, 164-65 (D.C. Cir 1996).

Furthermore, the district court properly concluded that appellant failed to state a claim for age discrimination. Appellant's complaint did not allege facts to support such a claim. Nor did she cite to the Age Discrimination in Employment Act, 29 U.S.C. § 633a, or seek leave to amend her complaint to do so despite being put on notice of this defect. Cf. Harrison v. Rubin, 174 F.3d 249, 252-53 (D.C. Cir. 1999).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA V. CARMONA

Plaintiff

v. Civil Action No. 01-0115 (CKK)

PAUL H. O'NEILL
Secretary, Department of the Treasury

Defendant

FILED
JAN 22 2002
NANCY MAYER WHITTINGTON,
CLERK, U.S. DISTRICT COURT

ORDER
(January 21, 2002)

For the reasons stated in the accompanying Memorandum Opinion, it is, this 21 of January, 2002, hereby

ORDERED that Defendant's Motion to Dismiss or, in the Alternative for Summary Judgment [#9] is GRANTED; it is further

ORDERED that this case be dismissed forthwith from the docket of the Court with prejudice. This is a final, appealable order.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA V. CARMONA

Plaintiff

v. Civil Action No. 01-0115 (CKK)

PAUL H. O'NEILL
Secretary, Department of the Treasury

Defendant

FILED
JAN 22 2002
NANCY MAYER WHITTINGTON,
CLERK, U.S. DISTRICT COURT

MEMORANDUM OPINION
(January 21, 2002)

Plaintiff Maria V. Carmona ("Plaintiff") is employed by the Department of the Treasury as a Supervisory Auditor. She has worked for the Office of Inspector General, Department of the Treasury for more than sixteen years and has been a Federal employee for twenty-five years. Compl. ¶ 11. This case arises out of Plaintiff's *pro se* claim under Title VII of the Civil Rights Act of 1964 against Paul H. O'Neill as Secretary of the Department of the Treasury ("Defendant"). Plaintiff alleges that she has been discriminated against by Defendant based on her national origin (Hispanic), her gender (female), and her age (over age forty). *Id* at ¶ 9. Presently before the Court is Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment [#9]. After considering Defendant's Motion, Plaintiff's Opposition thereto, Defendant's Reply, the applicable law, and the entire record of the case, the Court shall grant Defendant's

motion for summary judgment and dismiss the case with prejudice from the docket of the Court.

I. BACKGROUND

Plaintiff is a supervisory auditor employed by the Office of Inspector General, Department of the Treasury. Statement of Material Facts as to Which There is No Genuine Issue ("Stmt.") ¶ 1; Compl. ¶ 10. Plaintiff is a forty-eight year old, Hispanic white female who functions as an audit manager in Banking and Fiscal Service within the Office of Audit. Compl. ¶ 10. During 1997, Plaintiff filed six formal Equal Employment Opportunity ("EEO") complaints. Pl.'s Resp. in Opp'n to Def.'s Stmt. (Pl.'s Resp. to Stmt.) ¶ 2. Three of those formal EEO complaints, TD-98-1044, TD-98-1068, TD-98-1091, alleging discrimination on the basis national origin (Hispanic), sex (female), and age (over forty), as well as retaliation based on her prior participation in the EEO complaint process, are the subject of the action before this Court. Stmt. ¶ 2, Pl.'s Resp. to Stmt. ¶ 2.

On January 22, 1998, EEO Investigator Stephen Tolbert wrote to Plaintiff informing her that an initial meeting had been scheduled for Thursday, February 12, 1998 at 10:00 a.m. in regard to the three complaints at issue in this case. Def.'s Mot., Ex. 4, Pl.'s Ex. 11 (January 22, 1998, Memorandum from Stephen Tolbert to Plaintiff). The "purpose of [the] initial meeting [was] to allow [Plaintiff] to address the allegations made within [her] formal complaints." *Id.* The letter was sent via certified mail and Plaintiff readily admits that she received the letter. Pl.'s Opp'n. Ex. 11, at 2 (photocopies of envelopes that contained Mr. Tolbert's letter); *see also* Def.'s Mot., Ex. 5, (return receipt card showing Plaintiff received Mr. Tolbert's letter on February 9, 1998). Despite receipt of Defendant's letter on February 9, 1998, Plaintiff failed to appear at the February 12, 1998, meeting scheduled by Mr. Tolbert and failed to contact him to explain her absence or arrange for another mutually convenient date to meet. At the time of

this initial meeting, Plaintiff was represented by Mr. J. Steven Elbell, Esq.

Subsequently, on March 3, 1998, Michael Morgan-Gaide, Director of the Regional Complaint Center for the Department of the Treasury, wrote Mr. Elbell a letter (also sent to Plaintiff) which was received on March 6, 1998, by Plaintiff and her attorney. Def.'s Mot., Ex. 7. (return receipt cards showing when Plaintiff and her attorney received Mr. Tolbert's letter). In the letter dated March 3, 1998, Mr. Morgan-Gaide requested that Plaintiff provide a written statement responding to the questions attached to the letter. Def.'s Mot., Ex. 6, Pl.'s Opp'n, Ex. 12. (March 3, 1998, Letter from Michael Morgan-Gaide to J. Steven Elbell) at 1-2. The letter from Mr. Morgan-Gaide outlined the numerous attempts the Treasury Department's Regional Complaint Center had made to contact Mr. Elbell and Plaintiff:

> Commencing on January 27, 1998, the EEO Investigator, Stephen Tolbert, called and left a series of messages regarding meeting with you and the Complainant to which no response was ever received. Additional attempts to contact your were made on the following dates: January 28, February 3, February 6, and February 11, 1998. On February 4, 1998, the EEO Investigator forwarded questions concerning the issues accepted in these cases and requested that you prepare a written response to submit to him at the scheduled meeting of February 12, 1998. On that date, neither you or the Complainant showed up for the meeting. To date, we have not received a sworn affidavit as requested.

Id. at 1. The letter added that under the Equal Protection Opportunity Commission (EEOC) regulation 29 C.F.R. 1614.107(g)[1], "an agency shall dismiss a complaint where the

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[1] In 1999, this section was re-classified as 29 C.F.R. 1614.107 (a) (7). The text of the rule was not changed. For ease of discussion, the Court will refer to the regulation as it is currently numbered. *See* Rules and

agency has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt or does not address the agency's request." *Id* at 1.

The March 3, 1998, letter further advised Plaintiff that failure to return a written response to the questions enclosed therein could result in the dismissal of the complaint for failure to cooperate. *Id* at 2. Plaintiff states that her record of the case does not include any "investigator's questions." Pl.'s Resp. to Stmt.¶ 6. However, it remains undisputed that Plaintiff received the March 3, 1998, letter, notifying her that Defendant had yet to receive any written or oral information regarding the three EEO complaints that are at issue in the case. Despite receipt of this letter, neither Plaintiff nor her attorney responded. Stmt. ¶ 7. Having failed to appear for her initial interview and having neglected to submit any written information to the agency, on April 15, 1998, Defendant dismissed the three complaints pursuant to 29 C.F.R. § 1614.107. Def.'s Mot., Ex. 8, Pl.'s Opp'n, Ex. 13. (April 15, 1998, Letter from Michael Morgan-Gaide to J. Steven Elbell). The April 15, 1998, dismissal letter stated that the case was dismissed for failure to cooperate because Plaintiff had not responded to Defendant's request for information from Plaintiff. *Id.* Plaintiff was further advised that the Department of the Treasury's decision to dismiss the complaints was final, and was also informed of her appeal rights. *Id.* at 2.

Thereafter, Plaintiff appealed Defendant's decision. Stmt. ¶ 9. On March 1, 2000, the EEOC affirmed Defendant's dismissal of the complaints. Def.'s Mot., Ex. 9, (EEOC Appeal Decision). The EEOC concluded that Plaintiff failed to comply with any of Defendant's multiple requests to support her case, and thus found dismissal to be

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Regulations, Equal Employment Opportunity Commission, 64 Fed. Reg. 37,644 (July 12, 1999) ("[s]ection 1614.107 is amended by redesignating paragraphs (a) through (h) as paragraphs (a)(1) through (a)(8)").

proper under 29 C.F.R. § 1614.107(a)(7). *Id.* Plaintiff, in a letter dated April 3, 2000, submitted a Request for Reconsideration of the March 1, 2000, EEOC decision. Def.'s Mot., Ex. 10, Pl.'s Opp'n, Ex. 14 (Request for Reconsideration). On October 19, 2000, the EEOC denied Plaintiff's Request for Reconsideration, Def.'s Mot., Ex. 11, Pl.'s Opp'n, Ex. 15, (Denial of Request for Reconsideration), and on January 22, 2001, Plaintiff filed suit over the allegations of these three EEOC cases in this Court.[2]

On April 16, 2001, Defendant filed a Motion to Dismiss, or, in the Alternative for Summary Judgment. On May 3, 2001, this Court issued to Plaintiff an admonition that failure to respond to Defendant's motion could prove fatal to her case in accordance with the United States Court of Appeals for the District of Columbia's ruling in *Fox v. Strickland*, 837 F.2d 507 (D.C. Cir. 1998) and *Neal v. Kelly*, 963 F.2d 452 (D.C. Cir. 1992). *Carmona v. O'Neill*, No. 01cv115 (D.D.C. May 4, 2001) (*Fox-Neal* order). On May 14, 2001, the Court again reminded Plaintiff of her responsibility to file a response to Defendant's motion by June 4, 2001. *Carmona v. O'Neill*, No. 01cv115 (D.D.C. May 14, 2001). In accord with these orders, Plaintiff filed a timely opposition on June 4, 2001.

II. LEGAL STANDARD FOR EVALUATING DEFENDANT'S MOTION

Defendant's motion to dismiss is brought pursuant to Fed. R. Civ. P. 12(b)(1) and (6), or in the alternative, for summary judgment pursuant Fed. R. Civ. P. 56. At the

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[2] Plaintiff has brought her action under Title VII. However, Title VII is not the proper basis to bring a claim of discrimination on the basis of age. Rather the appropriate vehicle is the Age Discrimination in Employment Act (ADEA). Under the ADEA, exhaustion of administrative remedies is not a prerequisite to filing suit in Court. Age Discrimination in Employment Act, 29 U.S.C.A. § 633a (2001). However, as Plaintiff has failed to bring an ADEA claim, the Court shall not consider Plaintiff's complaint of discrimination on the basis of age. Therefore, the Court shall dismiss Plaintiff's age discrimination claim under Rule 12(b)(6) for failure to state a claim.

outset, the Court notes that Defendant's motion shall be considered under Rule 12(b)(6) and not Rule 12(b)(1). Under Title VII, an individual complaining of discrimination must exhaust her administrative remedies by filing an administrative charge with the EEOC. *See* 42 U.S.C. § 2000(e)-5(e)(1). Defendant, therefore, asserts that the case should be dismissed for failure to exhaust administrative remedies. Def.'s Mot. at 5-6. Dismissal for failure to exhaust administrative remedies, however, would be improper under Rule 12(b)(1) because exhaustion is not a prerequisite to a federal court's jurisdiction. *Hager v. NationsBank N.A.*, 167 F.3d 245, 248 n.3 (5th Cir. 1999); *Postels v. Peters*, 2000 WL 280018 (E.D.La. 2000).

Certainly if Congress were to explicitly withdraw federal court jurisdiction, in the text of a statute, then the exhaustion requirement would be jurisdictional. Such an explicit statutory pronouncement would be "tantamount to a legislative investiture of exclusive original jurisdiction in the agency." *Taylor v. United States Treasury Department*, 127 F.3d 470, 475 (5th Cir. 1997) (exhaustion is not a jurisdictional prerequisite in cases arising under the Privacy Act). However, where Congress has not explicitly prohibited a federal court's jurisdiction prior to exhaustion, then the jurisprudential doctrine of exhaustion controls. The jurisprudential exhaustion doctrine is not jurisdictional in nature, but rather relates to the '"long settled rule of judicial administration [which mandates] that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.'" *Id.* at 476 (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938); *Anjelino v. The New York Times Co.*, 200 F.3d 73, 87 (3d Cir. 1999) (citation omitted) ("Instead of a jurisdictional prerequisite, the purpose of the exhaustion requirement is practical and is meant to provide courts with the benefit of an agency's expertise, and serve judicial economy by having the administrative agency compile the factual record.").

The exhaustion requirement in Title VII is not sufficiently clear or unequivocal to render exhaustion to be a jurisdictional prerequisite. *Robinson v. Dalton*, 107 F.3d 1018, 1021 (3d Cir. 1997) ("questions of whether a plaintiff has timely exhausted the administrative remedies in Title VII actions are in the nature of statutes of limitation[, t]hey do not affect the district court's subject matter jurisdiction"); *see also Washington v. Washington Metropolitan Area Transit Authority*, 160 F.3d 750, 752 (D.C. Cir. 1998) (discussing the fact that the requirement that an employee file an administrative discrimination complaint prior to filing an ADEA or Title VII suit is not a jurisdictional prerequisite to suit in federal court, and as such, is subject to equitable tolling); *Angelino*, 200 F.3d at 87 ("The characterization either of lack of exhaustion or of untimeliness as a jurisdictional bar is particularly inapt in Title VII cases, where the courts are permitted to equitable toll filing requirements in certain circumstances."). Therefore, the exhaustion requirement at issue in this case is jurisprudential in nature and not jurisdictional. Accordingly, Defendant's motion for dismissal on the grounds of failure to exhaust administrative remedies will be considered under Fed R. Civ. P. 12(b)(6) and not 12(b)(1).

As the Court considers matters outside the pleadings to resolve the instant motion, Defendant's 12(b)(6) is converted into a motion for summary judgment pursuant to the dictates of Rule 12(c). "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Fed. R. Civ. P. 12(c). As such, the Court will review Defendant's motion under the summary judgment standard.

A party is entitled to summary judgment if the pleadings, depositions, and affidavits demonstrate that there is no genuine issue of material fact in dispute and that the moving party is entitled to judgment as a matter of law.

See Fed. R. Civ. P.56(c); *Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994). Although a court should draw all inferences from the supporting records submitted by the nonmoving party, the mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The adverse party's pleadings must evince the existence of a genuine issue of material fact. *See id.* at 247-48. To be material, the factual assertion must be capable of affecting the substantive outcome of the litigation; to be genuine, the issue must be supported by sufficiently admissible evidence such that a reasonable trier-of-fact could find for the nonmoving party. *See id.*; *Laningham v. United States Navy*, 813 F.2d 1236, 1242-43 (D.C. Cir. 1987). Mere allegations or denials in the adverse party's pleadings are insufficient to defeat an otherwise proper motion for summary judgment. Rather, the nonmoving party bears the affirmative duty to present, by affidavits or other means, specific facts showing that there is a genuine issue for trial. *See id.* at 1248-49. The adverse party must do more than simply "show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Inuds. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Additionally, the Court is especially cognizant of the fact that Plaintiff is proceeding *pro se*. In accordance with United States Court of Appeals for the District of Columbia Circuit precedent, the Court specifically instructed Plaintiff of the need to prepare and file affidavits attesting to the facts in dispute in responding to Defendant's motion. *Carmona v. O'Neill*, No. 01cv115 (D.D.C. May 4, 2001) (*Fox-Neal* order); *Carmona v. O'Neill*, No. 01cv115, (D.D.C. May 14, 2001) (order issuing another reminder). However, the District of Columbia Circuit has also instructed district courts that "[a]t least where a litigant is seeking a monetary award, we do not believe *pro se* status necessarily justifies special consideration. While such a *pro se* litigant must of course be given fair and equal treatment, he cannot generally be

permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983) (Scalia, J.). Thus while the Court has taken great pains to provide Plaintiff with time and process, she cannot "avoid the risks of failure that attend [her] decision to forgo expert assistance." *Id.*

III. DISCUSSION

As a Title VII Plaintiff, Ms. Carmona must exhaust administrative remedies before pursuing her claims in federal court. *Brown v. Gen. Serv. Admin.*, 425 U.S. 820 (1976); *Artis v. Greenspan*, 158 F.3d 1301 (D.C. Cir. 1998); *Nelson v. Greenspan*, 2001 WL 957729 (D.D.C. 2001). Failure to exhaust administrative remedies is "an affirmative defense [for which] the defendant bears the burden of pleading and proving it." *Bowden v. United States*, 106 F.3d 433, 437 (D.C. Cir. 1997). When a defendant meets its burden, the plaintiff "then bears the burden of pleading and proving facts supporting equitable avoidance of the defense." *Id.*

Even though Plaintiff's case was officially dismissed by the EEOC, Plaintiff's claim is still treated as one of failure to exhaust administrative remedies. Courts equate cases of a plaintiff failing to cooperate with the agency as cases where a plaintiff has failed to exhaust her administrative remedies. As the United States Court of Appeals for the District of Columbia Circuit has stated:

> If a complainant forces an agency to dismiss or cancel the complaint by failing to provide sufficient information to enable the agency to investigate the claim, he may not file a judicial suit. Even though the dismissal is "final action," which would normally trigger the right to sue . . . the suit will be barred for failure to exhaust administrative remedies. The purpose of the doctrine is to afford the agency an opportunity to resolve the matter internally and to avoid unnecessarily burdening the

> courts. Thus, even if the plaintiff fails to make a good-faith attempt to comply with reasonable agency requests for information, the policy underlying the doctrine is not served unless the default prevents the agency from acting on the merits of the complaint. This conclusion is borne out by the facts of the cases that have invoked the doctrine, in which the complainants rest on vague allegations of discrimination and refuse to provide any details or dates, thus completely frustrating the agencies' ability to investigate complaints.

Wilson v. Pena, 79 F.3d 154, 164-65 (D.C. Cir. 1996) (citations omitted). Thus, the Court will view Plaintiff's case from the perspective of a failure to exhaust administrative remedies.

An agency may dismiss an EEO complaint only after it has given the complainant a written request, that includes a notice of the proposed cancellation. The written request must include either a request to supply pertinent information or otherwise proceed with the action. If the complainant fails to reply to this request within fifteen days of receipt of the written request the agency may dismiss the complaint. Federal Sector Equal Employment Opportunity, 29 C.F.R. § 1614.107(a)(7) (2001). The District of Columbia Circuit has stated that EEO complaints "must be brought to the EEO Counselor in a manner that lends itself to potential resolution." *Artis*, 158 F.3d at 1306. The purpose of such a requirement is to enable the agency charged with resolving these claims to comply with its statutory mandate. *Id.* (quoting 12 C.F.R. § 268.204(a) (1995)) (discussing the fact that the "purpose of EEO counseling is 'to try to informally resolve the matter'").

In the instant case, it is undisputed that Plaintiff failed to cooperate with the agency's request for information, and therefore, the Court readily concludes that Plaintiff failed to exhaust her administrative remedies. As noted *supra*, it is not disputed that the Treasury Department EEO counselor assigned to Plaintiff's case contacted Plaintiff through a

letter dated January 22, 1998. Plaintiff and her attorney failed to respond to that letter and attend the scheduled meeting. It is undisputed that Plaintiff was again contacted by the agency in a letter dated March 3, 1998. This letter included a section describing the numerous efforts the EEO counselor had made to contact Plaintiff. In accordance with 29 C.F.R. § 1614. 107(a)(7), the EEO officer requested that Plaintiff respond within fifteen days to requests for information. It is not contested that Plaintiff failed to respond to the March 3, 1998, letter.[3] Given Plaintiff and her attorney's utter failure to cooperate, the agency properly dismissed her three complaints and, as such, this Court shall dismiss her suit for failure to exhaust her administrative remedies. *See Artis*, 158 F .3d at 1306. (collecting cases that support the proposition that if a complainant causes an agency to dismiss the claim by failing to supply information to assist the agency in conducting an investigation, the complainant may not file a civil lawsuit).

Plaintiff, as the nonmoving party, must, in her pleadings, "evince the existence of a genuine issue of material fact," *Anderson*, 477 U.S. at 247-48, in order to survive Defendant's motion for summary judgment. In this case, Plaintiff does not dispute or raise any issues of material fact to contest, that after filing her discrimination complaint, she failed to cooperate with the EEO investigation. While Plaintiff has submitted a voluminous response to Defendant's motion, Plaintiff's opposition never mentions or attempts to explain her failure to cooperate at the administrative stage. Notably, in both the complaint and the opposition filed in this case, Plaintiff provides

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[3] While Plaintiff states that she does not have as part of her record of the case, investigator's questions, Pl.'s Resp. to Stmt. ¶ 6, it is not disputed that upon receipt of the March 3, 1998, letter, Plaintiff and her attorney failed to take any steps to contact the agency or provide information about Plaintiff's complaint, despite the fact that the March 3, 1998, letter explicitly stated that Plaintiff's complaint might be dismissed if no response was received by the agency.

insufficient explanation as to why she did not attend the initial interview or produce any affidavits or written statements regarding her complaint to Defendant. Rather, Plaintiff merely states that the Defendant "had sufficient information within the formal EEO complaints as filed and within its own records, such that the Defendant should have conducted its investigations before dismissing the Plaintiff's formal EEO complaints for failure to cooperate." Pl.'s Opp'n ¶ 29. Plaintiff also did not believe it proper to provide information in the form of an affidavit "that pertained only to issue(s) as stated by the Department of the Treasury, which the Plaintiff was maintaining was an incomplete and incorrect representation of the issues as stated by the Plaintiff in the formal EEO complaints." *Id.* ¶ 32. These purported explanations, however, fall far short of providing the Court of a reason for ignoring the agency's repeated requests for information. *See Artis*, 158 F.3d at 1306 (citation omitted) ("Agencies cannot make informed decisions based on vague allegations of discrimination without details or dates because this frustrates the agencies' ability to investigate complaints and impedes their efforts to issue final rulings on the merits."). Whether or not Plaintiff disagreed with the nature of the complaint as stated by the agency, or whether or not Plaintiff believed the agency had enough information to make a decision on the merits, ignores the gravamen of Defendant's argument: namely, that Plaintiff was required to make *an effort to* at least cooperate at the agency level. In this case, Plaintiff made no attempt to cooperate or partake in the agency process.

Such behavior runs counter to the sound rationale underlying the jurisprudential doctrine of exhaustion. As another member of this Court has observed:

> The purposes of the exhaustion requirement are both obvious and salutary. The employer is to be given the first opportunity to address the possibility or the perception of discrimination in his workplace. He may be able to achieve prompt, mutually

> agreeable resolutions of problems while they remain of manageable proportions. It is also to all parties' advantage to promote workplace efficiency and harmony without the necessity of judicial intervention. And, certainly not the least important, demanding serious efforts towards settlement at the outset gives some assurance that the courts will not have to waste their time on cases that are amenable to less costly, time-consuming solutions. Those purposes are all undermined by treating the right to file a lawsuit alleging discrimination as an elective alternative to a serious first effort to solve problems of workplace discrimination in-house and without litigation.

Hill v. Runyon, 12 F. Supp. 2d. 30, 33 (D.D.C. 1998). Given this sensible rule, the Court will not sanction Plaintiff's suit in this forum after her utter lack of cooperation at the agency level. To permit litigation in this Court would run counter to the well-settled rule of jurisprudence requiring exhaustion of administrative remedies at the agency stage.

Plaintiff is correct that Defendant's motion for dismissal "focus[es] on procedural issues rather than on the merits of the Plaintiff's claims." Pl.'s Opp'n. ¶ E. To date, no agency or court has specifically addressed the merits of Plaintiff's grievances. Plaintiff's EEO complaints were dismissed by the Department of the Treasury due to her failure to cooperate. Defendant was impeded from issuing a final ruling on the merits because it did not have sufficient information to assess the claims. Consequently, Plaintiff has not met her burden requiring her to prove that there are any genuine issues of material facts to counter Defendant's assertion that she has not exhausted administrative remedies. As such, this Court shall grant Defendant's motion for summary judgment.

IV. CONCLUSION

For the reasons stated above, the Court has concluded that Plaintiff has failed to show that there are any genuine issues of material fact in regard to her not having exhausted the available administrative remedies. While the Court certainly recognizes the time and considerable effort Plaintiff has put into attempting to make her case, the Court also recognizes the importance of cooperation at the agency stage of the complaint. It is not enough for Plaintiff to utilize her disagreement with the EEO Counselor's statement of her case as a means of not cooperating with the agency. It is also not proper for a complainant to ignore diligent requests for information simply because Plaintiff was satisfied that the agency had enough information to reach its decision. The EEOC process, while admittedly not perfect, is respectable in its goals of seeking to resolve conflicts before they plunge into acrimonious litigation. For the Court to ignore the efforts of the agency and, in essence, reward Plaintiff's non-cooperation, would engender particularly undesirable outcomes. Accordingly, Defendant's motion for summary judgment shall be granted. Plaintiff failed to exhaust her administrative remedies in regard to her complaints of discrimination on the basis of national origin and gender. Plaintiff has additionally failed to state a complaint for age discrimination. An Order accompanies this Memorandum Opinion.

/s/_____
COLLEEN KOLLAR-KOTELLY
United States District Judge

United States Court of Appeals
For the District of Columbia

No. 02-5088 **September Term, 2002**
01cv00115

Filed On:

Maria V. Carmona,
Appellant

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED OCT 1 2002
CLERK

v.

Paul H. O'Neill, Secretary, U. S. Department of Treasury,
Appellee

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers,* Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/_____
Michael C. McGrail
Deputy Clerk

* Circuit Judge Rogers did not participate in this matter.